

BARRY E. HINKLE, Bar No. 071223
 LINDA BALDWIN JONES, Bar No. 178922
 NICOLE M. PHILLIPS, Bar No. 203786
 BRUCE A. HARLAND, Bar No. 230477
 WEINBERG, ROGER & ROSENFELD
 A Professional Corporation
 1001 Marina Village Parkway, Suite 200
 Alameda, California 94501-1091
 Telephone 510.337.1001
 Fax 510.337.1023

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

KEN WALTERS and JOHN BONILLA, in) No. C 06-03429 SBA
their respective capacities as Trustees of the)
OPERATING ENGINEERS HEALTH AND) REQUEST FOR DISMISSAL WITHOUT
WELFARE TRUST FUND FOR NORTHERN) PREJUDICE; [PROPOSED] ORDER
CALIFORNIA; TRUSTEES OF THE)
PENSION TRUST FUND FOR OPERATING)
ENGINEERS; TRUSTEES OF THE)
PENSIONED OPERATING ENGINEERS)
HEALTH AND WELFARE FUND;)
TRUSTEES OF THE OPERATING)
ENGINEERS AND PARTICIPATING)
EMPLOYERS PRE-APPRENTICESHIP,)
APPRENTICE AND JOURNEYMEN)
AFFIRMATIVE ACTION TRAINING FUND;)
TRUSTEES OF THE OPERATING)
ENGINEERS VACATION AND HOLIDAY)
PLAN,)
)
Plaintiffs,)
)
v.)
)
CHESTER LEE NEAL, JR., Individually;)
CHESTER LEE NEAL, JR., Individually and)
doing business as C L NEAL)
CONSTRUCTION; and C L NEAL)
CONSTRUCTION,)
)
Defendants.)

///

///

///

Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiffs respectfully request that the Court dismiss the above-captioned action without prejudice. Plaintiffs have been informed that Defendant Chester L. Neal, individually and doing business as C.L. Neal Construction, has filed for Chapter 7 bankruptcy.

Dated: October 15, 2009

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ KRISTINA M. ZINNEN
KRISTINA M. ZINNEN
Attorneys for Plaintiffs

[PROPOSED] ORDER

IT IS SO ORDERED.

Dated: 10/19/09


THE HONORABLE SAUNDRA B. ARMSTRONG
UNITED STATES DISTRICT COURT JUDGE

112876/547776

PROOF OF SERVICE

I am a citizen of the United States, and a resident of the State of California. I am over the age of eighteen years, and not a party to the within action. My business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On October 15, 2009, I served upon the following parties in this action:

Chester Lee Neal, Jr., Individually
 Chester Lee Neal, Jr, Individually and dba C L Neal
 Construction; and
 C L Neal Construction
 4429 E. Grant
 Fresno, CA 93702

copies of the document(s) described as:

REQUEST FOR DISMISSAL WITHOUT PREJUDICE; [PROPOSED] ORDER

- ☒ **BY MAIL** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.
- ☐ **BY PERSONAL SERVICE** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused the same to be delivered by hand to the offices of each addressee.
- ☐ **BY OVERNIGHT DELIVERY SERVICE** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and placed the same for collection by Overnight Delivery Service by following the ordinary business practices of Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery Service correspondence, said practice being that in the ordinary course of business, Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service offices for next day delivery the same day as Overnight Delivery Service correspondence is placed for collection.
- ☐ **BY FACSIMILE** I caused to be transmitted each document listed herein via the fax number(s) listed above or on the attached service list.

I certify that the above is true and correct. Executed at Alameda, California, on October 15, 2009.

/s/ Rhonda Fortier Bourne
 Rhonda Fortier Bourne

112876/547776